

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7261 of 1998
with
CIVIL APPLICATION NO 9433 OF 2002 & 6733
OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ROHIT BHIKHABHAI VALABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7261 of 1998
MR NK MAJMUDAR for Petitioner No. 1
Mr. KL Pandya, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. NK Majmudar for the petitioner. According to the petitioner, he is working as a craft teacher (Composing) in the school for deaf mutes, Ahmedabad since March, 1989. The petitioner is a qualified teacher. Under the Social Welfare Department, qualified craft teachers are given the pay scale of Rs.1350-2200 whereas for non qualified teachers, the pay scale of Rs.1150-1500 is prescribed. According to the petitioner, prior to the petitioner's appointment, one Ramanlal Thakkar was working on the said post who was a non qualified teacher and he was therefore placed in the pay scale of Rs.1150-1500 and on his retirement, the petitioner was appointed to the said vacant post. According to the petitioner, though the petitioner is a qualified teacher, he has been appointed in the pay scale of Rs.1150-1500 which is prescribed for the non qualified teacher. Representations were made by the petitioner before the Director of Social Defence as well as to the Government. The Director of Social Welfare, however, refused to accede to the request of the petitioner on the ground that the post of non qualified teacher was sanctioned in the school and the petitioner had accepted appointment in the pay scale of Rs.1150-1500 and, therefore, the petitioner has filed this petition.

Reply to the present petition has been filed by the respondents against which, rejoinder has also been filed by the petitioner. According to the reply of the respondents, the petitioner was appointed by appointment letter dated 18.3.1989 on the post of compositor in the pay scale of Rs.1150-1500. According to the respondents, the prayers made by the petitioner are misconceived in fact and law both because the petitioner was appointed on the post of compositor and he is working as a compositor. Higher qualification of the petitioner will not entail him to draw higher pay scale of higher category unless he is promoted or he is appointed on that particular post. The petitioner is praying for the pay scale of craft teacher but he is not appointed on the said post. It has also been submitted by the respondents that in the institution run by the social welfare department, in the press department of the said institution, there are recruitment rules for the post of compositor for which post, candidate is required to have passed the SSC and should have passed hand composing trade. According to the respondents, simply because the petitioner is holding higher qualification would not make him eligible to get salary of the higher post for which he is not appointed. It has been denied that the petitioner is

working as craft teacher. It has also been submitted that in the press department in the school of deaf and dumb at Ahmedabad, there is no distinction between qualified and non qualified compositors and the pay scale for the post of compositor is Rs.1150-1500. It was also submitted that Mr Ramanlal Thakkar was appointed on the post of compositor in the pay scale of Rs.1150-1500 and after his retirement, on the said vacant post, the petitioner was appointed as such which was accepted by the petitioner and, therefore, the petitioner has no right to raise any grievance. It has also been submitted that it may be true that the petitioner is possessing the qualification for the post of craft teacher but since he was appointed for the post of compositor, there is no question of any injustice to the petitioner. The allegations made by the petitioner in that regard have been denied by the respondents in their affidavit in reply and ultimately it has been prayed for rejecting the petition.

During the course of hearing, it was submitted by the learned AGP on behalf of the respondents that as per the appointment order at page 61, it is clear that the petitioner was appointed as compositor teacher on 16.3.1989. He also submitted that the post in question has been sanctioned by the department for the post of compositor teacher and not the craft teacher. According to the learned AGP, whole difficulty has been created by the petitioner demanding the pay scale of the post on which he has never been appointed. According to him, there is no substance in the petition and the petitioner cannot claim the pay or pay scale of the post on which he has not been appointed. According to him, once the petitioner has accepted the pay scale of Rs.1150-1500 for the post of compositor teacher, then, it is not open for him to raise any grievance for the pay scale of craft teacher only on the basis of his educational qualification and that too after the period of ten years. According to the learned AGP Mr. Pandya, the petitioner has also been given the higher grade as per the 5th Pay Commission considering his existing grade of Rs.1150-1500 in the pay scale of Rs.4000-6000 on 19.12.2002.

Learned Advocate Mr. Majmudar for the petitioner has raised certain contentions about discrimination. According to him, the petitioner is qualified for being appointed as a craft teacher and yet the scale of the said post has been denied to the petitioner.

I have considered the contentions raised by the learned advocates for the parties. According to my

opinion, whole controversy has been created by the petitioner himself and as such, there is no post of craft teacher sanctioned by the department for the institution wherein the petitioner is working. He is possessing qualification of compositor as well as the craft teacher. Qualification for the post of craft teacher as per the notification at page 109 dated 14th May, 1996 is that the candidate should have passed the SSC Examination or its equivalent examination; should possess experience of assistant machineman for a period of about five years; possess ability to make ready, handle machine both automatic and hand fed independently to set rollers, impose stereo plates, adjust numbering machines, adjust ink duct, to print half tone line and colour line blocks. The qualifications for the post of compositor as per the notification dated 14.5.1996 are to the effect that the candidate should have passed SSC Examination; should have passed trade test consisting of four hours in and composing in English, Gujarati and Hindi; should have ability to compose 1000 corrected Ens per hour in English and 800 corrected Ens per hour in Gujarati both excluding distribution. He is required to have knowledge of different type styles, display and composition make up imposition and should be able to carry out about 80 corrections per hour and possess experience of compositor for a period of about five years. Though the petitioner is not possessing the qualification for the post of compositor teacher, he was appointed on that post as the post of craft teacher was not sanctioned by the department. Therefore, according to my opinion, when there is no pay scale prescribed by the State Government at page 19 for the post of craft teacher and the scale of craft teacher has nothing to do with the post of the petitioner. I am of the opinion that the whole difficulty has been created by the petitioner himself and the petitioner is claiming the pay scale of the post of craft teacher on which he has never been appointed. Post of compositor teacher was knowingly accepted by him and therefore, principles of promissory estoppel are also applicable in the present case and, therefore, considering the entire facts and circumstances of the case, and also considering the reply of the respondents, according to my opinion, most of the facts are not in dispute between the parties that the petitioner was appointed on the post of compositor in the pay scale of 1150-1500 and not on the post of craft teacher and, therefore, he is not entitled to claim the pay scale of the post of craft teacher. I am of the view that the petitioner may be eligible for being appointed as a craft teacher but since he has in fact not been appointed as such, he cannot claim the pay scale attached to the said

post and, therefore, the petitioner is not entitled for the reliefs as prayed for in this petition. Therefore, there is no substance in this petition and the petition is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

In view of this order passed by this court on the main matter, aforesaid civil applications shall not survive and the same are, therefore, disposed of with no order as to costs.

Dt.24.9.2003. (H.K. Rathod,J.)

Vyas